

**Introduced by Senator Kuehl**

February 22, 2005

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An act to amend Section 13269 of the Water Code, relating to water.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 646, as introduced, Kuehl. Water discharge requirements: waivers.

Existing law, the Porter-Cologne Water Quality Control Act, authorizes the State Water Resources Control Board and a California regional water quality control board to waive certain waste discharge requirements as to a specific discharge or type of discharge if the state board or the regional board makes a specified determination. The act authorizes the state board or a regional board to include as a condition of the waiver the payment of an annual fee.

This bill would prohibit the state board or a regional board from granting a waiver for a discharge into a water body that is identified as impaired pursuant to a provision of the federal Clean Water Act. The bill would require the state board or a regional board to include the payment of an annual fee as a condition of a waiver, and would require the annual fee to be adequate to pay for the cost of the waiver program.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 13269 of the Water Code is amended to  
2 read:

1 13269. (a) (1) (A) On and after January 1, 2000, *but subject*  
2 *to subparagraph (B)*, the provisions of subdivisions (a) and (c) of  
3 Section 13260, subdivision (a) of Section 13263, or subdivision  
4 (a) of Section 13264 may be waived by the state board or a  
5 regional board as to a specific discharge or type of discharge if  
6 the state board or a regional board determines, after any  
7 necessary state board or regional board meeting, that the waiver  
8 is consistent with any applicable state or regional water quality  
9 control plan and is in the public interest. The state board or a  
10 regional board shall give notice of any necessary meeting by  
11 publication pursuant to Section 11125 of the Government Code.

12 (B) *The provisions described in subparagraph (A) shall not be*  
13 *waived for a discharge into a water body that is identified as*  
14 *impaired pursuant to Section 303(d) of the Clean Water Act (33*  
15 *U.S.C. Sec. 1313(d)).*

16 (2) A waiver may not exceed five years in duration, but may  
17 be renewed by the state board or a regional board. The waiver  
18 shall be conditional and may be terminated at any time by the  
19 state board or a regional board. The conditions of the waiver  
20 shall include, but need not be limited to, the performance of  
21 individual, group, or watershed-based monitoring, except as  
22 provided in paragraph (3). Monitoring requirements shall be  
23 designed to support the development and implementation of the  
24 waiver program, including, but not limited to, verifying the  
25 adequacy and effectiveness of the waiver's conditions. In  
26 establishing monitoring requirements, the regional board may  
27 consider the volume, duration, frequency, and constituents of the  
28 discharge; the extent and type of existing monitoring activities,  
29 including, but not limited to, existing watershed-based,  
30 compliance, and effectiveness monitoring efforts; the size of the  
31 project area; and other relevant factors. Monitoring results shall  
32 be made available to the public.

33 (3) The state board or a regional board may waive the  
34 monitoring requirements described in this subdivision for  
35 discharges that it determines do not pose a significant threat to  
36 water quality.

37 (4) (A) The state board or a regional board ~~may~~ *shall* include  
38 as a condition of a waiver the payment of an annual fee  
39 established by the state board in accordance with subdivision (f)

1 of Section 13260. *The annual fee shall be adequate to pay for the*  
2 *cost of the waiver program.*

3 (B) Funds generated by the payment of the fee shall be  
4 deposited in the Waste Discharge Permit Fund for expenditure,  
5 upon appropriation by the Legislature, by the state board or  
6 appropriate regional board for the purpose of carrying out  
7 activities limited to those necessary to establish and implement  
8 the waiver program pursuant to this section. The total amount of  
9 annual fees collected pursuant to this section shall not exceed the  
10 costs of those activities necessary to establish and implement  
11 waivers of waste discharge requirements pursuant to this section.

12 (C) In establishing the amount of a fee that may be imposed on  
13 irrigated agriculture operations pursuant to this section, the state  
14 board shall consider relevant factors, including, but not limited  
15 to, all of the following:

16 (i) The size of the operations.

17 (ii) Any compliance costs borne by the operations pursuant to  
18 state and federal water quality regulations.

19 (iii) Any costs associated with water quality monitoring  
20 performed or funded by the operations.

21 (iv) Participation in a watershed management program  
22 approved by the applicable regional board.

23 (D) In establishing the amount of a fee that may be imposed  
24 on silviculture operations pursuant to this section, the state board  
25 shall consider relevant factors, including, but not limited to, all of  
26 the following:

27 (i) The size of the operations.

28 (ii) Any compliance costs borne by the operations pursuant to  
29 state and federal water quality regulations.

30 (iii) Any costs associated with water quality monitoring  
31 performed or funded by the operations.

32 (iv) The average annual number of timber harvest plans  
33 proposed by the operations.

34 (5) The state board or a regional board shall give notice of the  
35 adoption of a waiver by publication within the affected county or  
36 counties as set forth in Section 6061 of the Government Code.

37 (b) (1) A waiver in effect on January 1, 2000, shall remain  
38 valid until January 1, 2003, unless the regional board terminates  
39 that waiver prior to that date. All waivers that were valid on  
40 January 1, 2000, and granted an extension until January 1, 2003,

1 and not otherwise terminated, may be renewed by a regional  
2 board in five-year increments.

3 (2) Notwithstanding paragraph (1), a waiver for an onsite  
4 sewage treatment system that is in effect on January 1, 2002,  
5 shall remain valid until June 30, 2004, unless the regional board  
6 terminates the waiver prior to that date. Any waiver for onsite  
7 sewage treatment systems adopted or renewed after June 30,  
8 2004, shall be consistent with the applicable regulations or  
9 standards for onsite sewage treatment systems adopted or  
10 retained in accordance with Section 13291.

11 (c) Upon notification of the appropriate regional board of the  
12 discharge or proposed discharge, except as provided in  
13 subdivision (d), the provisions of subdivisions (a) and (c) of  
14 Section 13260, subdivision (a) of Section 13263, and subdivision  
15 (a) of Section 13264 do not apply to a discharge resulting from  
16 any of the following emergency activities:

17 (1) Immediate emergency work necessary to protect life or  
18 property or immediate emergency repairs to public service  
19 facilities necessary to maintain service as a result of a disaster in  
20 a disaster-stricken area in which a state of emergency has been  
21 proclaimed by the Governor pursuant to Chapter 7 (commencing  
22 with Section 8550) of Division 1 of Title 2 of the Government  
23 Code.

24 (2) Emergency projects undertaken, carried out, or approved  
25 by a public agency to maintain, repair, or restore an existing  
26 highway, as defined in Section 360 of the Vehicle Code, except  
27 for a highway designated as an official state scenic highway  
28 pursuant to Section 262 of the Streets and Highways Code,  
29 within the existing right-of-way of the highway, damaged as a  
30 result of fire, flood, storm, earthquake, land subsidence, gradual  
31 earth movement, or landslide within one year of the damage.  
32 This paragraph does not exempt from this section any project  
33 undertaken, carried out, or approved by a public agency to  
34 expand or widen a highway damaged by fire, flood, storm,  
35 earthquake, land subsidence, gradual earth movement, or  
36 landslide.

37 (d) Subdivision (c) is not a limitation of the authority of a  
38 regional board under subdivision (a) to determine that any  
39 provision of this division shall not be waived or to establish  
40 conditions of a waiver. Subdivision (c) shall not apply to the

1 extent that it is inconsistent with any waiver or other order or  
2 prohibition issued under this division.

3 (e) The regional boards and the state board shall require  
4 compliance with the conditions pursuant to which waivers are  
5 granted under this section.

6 (f) Prior to renewing any waiver for a specific type of  
7 discharge established under this section, the state board or a  
8 regional board shall review the terms of the waiver policy at a  
9 public hearing. At the hearing, the state board or a regional board  
10 shall determine whether the discharge for which the waiver  
11 policy was established should be subject to general or individual  
12 waste discharge requirements.